IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.07.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

H.C.P.No.219/2007

Saravanan .. Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Prohibition and Excise Department
Fort St.George,
Chennai-9.

2.District Magistrate &
District Collector,
Thiruvannamalai District .. Respondents

For Petitioner: Mr.O.S.Thilak Pasumbadiyar
For Respondent: Mr.Babu Muthu Meeran, Addl.PP.

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus to call for the records of the second Respondent pertaining to the order made in D.O.No.11/2007-C2 dated 09.02.2007, detaining the detenu under Act 14/1982 as a Bootlegger, quash the same and direct the respondents to produce the detenu Balu and set him at liberty.

O R D E R

R.BANUMATHI, J.

Challenge in this Habeas Corpus Petition is to the detention order dated 09.02.2007 whereby petitioner's brother Balu was branded as "Bootlegger" as contemplated under Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2.The detenu had earlier come to adverse notice in four prohibition cases, Thanipadi P.S. in Cr.Nos.928/2005, 98/2006, 644/2006 and 754/2006.. The immediate cause for passing the detention order is the occurrence on

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10.01.2007 where the detenu is alleged to have sold illicit arrack allegedly containing poisonous substance. On the complaint lodged by the complainant Kesavel, case was registered in Cr.No.6/2007 on Thanipadi P.S. On being satisfied that if the detenu comes out on bail he will indulge in future activities which would be prejudicial to the maintenance of public order, the impugned detention order was clamped on the detenu.

3.Even though several contentions were raised and argued as well, the learned Counsel for the petitioner mainly focussed attention on non-furnishing of certain documents requested by the detenu. Case of the detenu is that he was taken to police station on 08.01.2007 and he was kept in illegal custody and the ground case is shown to have taken place on 10.01.2007 and arrest having been shown on that date and the detenu was also produced in Court in connection with Cr.No.6/2007. The learned Counsel for the petitioner mainly contended that if the detenu had been in continued illegal custody from 08.01.2007, the detenu could not have been involved in the ground case.

4.In that view of the matter, the counsel for the detenu has also sent representation dated 14.02.2007 to the Detaining Authority asking for the records in the police station viz., Para Register, Food Distribution Register and Prisoner's Search Register. In the said representation, specific plea was taken that the detenu was illegally detained from 08.01.2007 and remanded on 10.01.2007 showing formal arrest in Cr.No.6/2007. Though specific plea was taken and request for supply of documents was made, Government had rejected the representation by its Memorandum dated 02.03.2007 stating that the documents on which Detaining Authority had relied upon have already been furnished to the detenu. No new document had been furnished to the detenu. What was asked for were new documents which were not found in the booklet furnished to the detenu.

5.Case of detenu is that he was taken to illegal custody on 08.01.2007 and formal arrest had been shown on 10.01.2007 and had he been in continued custody from 08.01.2007, he could not have been involved in Cr.No.6/2007. The detenu had asked for Para Register, Food Distribution Register and Prisoner's Search Register to substantiate his defence. Though such plea was reflected in the representation, we are of the view that representation was mechanically rejected, by simply stating that the documents were already furnished to the detenu.

6.The learned Addl. Public Prosecutor has submitted that the detenu had not made any complaint at the time when he was produced for remand before the Judicial Magistrate and therefore, it was not possible that the detenu was in the illegal custody of the police from 08.01.2007 to 10.01.2007. Drawing our attention to the representation sent by the counsel for the detenu, the learned Addl. Public Prosecutor has further submitted that this representation has been made not by the detenu but by his counsel. In our opinion, none of the contentions merit acceptance. It may that the detenu has not made any statement before the Judicial Magistrate complaining about his illegal custody from 08.01.2007 to

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10.01.2007. When detenu had taken a definite plea that he was in illegal custody from 08.01.2007, those documents which he sought for are relevant for putting forth an effective representation. When such request for supply of documents enabling the detenu to putforth effective representation was made, the Detaining Authority and Government are expected to furnish those documents.

7.Law is now well settled that where a document is a relied upon document in the grounds of detention, the detaining authority is required to furnish copy of such relied upon document to the detenu an the order of detention becomes invalid, if such document is not furnished. (See 1999 SCC (Crl) 231 (POWANAMMAL v. STATE OF TAMIL NADU & OTHERS). Where a document is not relied upon document, but merely referred to, non-supply of such document does not have the ipso facto effect of making the order of detention vulnerable. However, if the detenu request for supply of such documents, which have been referred to, ordinarily such documents are to be supplied and at any rate such request should not be rejected mechanically. Similarly, where a document is neither relied upon nor referred to and yet the detenu makes a representation for supply of such document, such request should not be mechanically rejected unless on the face of it such a document is entirely irrelevant from the point of view of making representation.

8.Even if the document is not relevant for the purpose of detention, but if the detenu considers it relevant for the purpose of his defence and asks for the same, it has to be supplied to him. In this case, detenu has asked for Para Register, Food Distribution Register and Prisoner's Search Register. But his representation was mechanically rejected by the Government and the detention order is liable to be quashed. In HCP No.1844/1999, a Division Bench of this Court has quashed the detention order on the same ground of non-furnishing of Lock up Register, Food Distribution Register and Prisoner's Register where the detenu has taken a specific plea that he was in illegal custody. In such view of clear position, we find that the detention order is liable to be quashed.

9.Therefore, the detention order is set aside and this petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary,
Prohibition and Excise Department
Fort St.George, Chennai-9.

2.District Magistrate & District Collector,
Thiruvannamalai District

3.The Public Prosecutor, High Court, Madras

4. The Superintendent,
Central Prison, Vellore.

5. The Joint Secretary to Government,
Public (Law and Order)
Fort St.George, Chennai -9.

1 cc To Mr.O.S.Thilak Pasumbadiar, Advocate, SR.40303.

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TEJ(CO)
RVL 12.07.2007

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